IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.568 OF 1993

1. Shri.Karsanbhai G.Patel
2. Shri.Zaverbhai G. Patel
3. Shri.Jagdishbhai G. Patel
   All having their address at Flat No.10,
   Ganga Laheri, 19, Banganga Road,
   Bombay - 400 026. **..Petitioners**

Versus

1. (a) S.K.Laul, Chief Engineer,
   (b) S.C.Tiwari, Commissioner of Income Tax
   (c) C.M.Betgeri, Commissioner of Income Tax
   All members of the Appropriate Authority
   having their office at 3rd Floor,
   Mittal Court, 'A' Wing,
   Nariman Point, Bombay - 400021.

2. Union of India.

3. Smt.Vasantiben R.Shah,
   709/10, Sheffield Tower,
   7th Floor, Lokhandwala Complex,
   Andheri(W), Bombay. **..Respondents**

Mrs.Jagtiani i/b.D.M.Harish & Co.for the Petitioners.

Mr.R.Ashokan for the Respondents.

CORAM :- DR.S.RADHAKRISHNAN &
V.C.DAGA, JJ.

DATE : 5TH JUNE, 2007

JUDGMENT (PER : DR.S.RADHAKRISHNAN,J.)

1. By this Petition, the Petitioners are challenging the order dated 23rd February,1993, passed by the Commissioner of Income Tax under Section 269UD(1) of the Income Tax,1961 (hereinafter referred to as "the Act"). The Petitioners have also prayed for a direction to Respondent No.1 for grant of 'No Objection Certificate' and to release and restore the

property to the full title and possession of the Petitioners. The Petitioners have also prayed that the Respondents, their officers, servants and agents be restrained by an order of an injunction from taking possession of the property being Flat No.10, Ganga Laheri, 19, Bangaga Road, Bombay-400006 (hereinafter referred to as the said property).

2. The brief facts of the case are that a Memorandum of Understanding entered into between Respondent No.3 (hereinafter referred to as the Transferor) and Petitioner Nos.1 to 3 (hereinafter referred to as the Transferee) for sale of said property for a consideration of Rs.16,51,000/-. It is the contention of the Petitioners that by a resolution dated 13th April,1993, the Managing committee of the Ganga Laheri Apartment Cooperative Housing Society Ltd. had passed a resolution that the transferee and transferor each should pay a sum calculated @ Rs.25/- per square foot of the carpet area by way of Donation.

3. It appears that a Form No.37-I dated 28th September,1987 had been filed on 5th October,1987. It is pointed out by the learned Counsel for the Petitioners, Mrs.Jagtiani that the said property was the subject matter of an earlier purchase order under Section 269UD(1) of the Income Tax Act, which was challenged in Writ Petition No.4075 of 1987 in this Court, and the said Petition came to be disposed of on

16th December,1992, whereby this Court had directed the Appropriate Authority to comply with the directions of the Hon'ble Supreme Court, given in the case of **C.B.Gautam Vs. Union of India, 199 ITR 530**, accordingly the earlier purchase order was set aside.

4. The learned Counsel appearing on behalf of the Petitioners contended that after remanding back the matter, the Petitioners had received a Show Cause Notice dated 30th December,1992 along with copy of reasons recorded, calling upon the Petitioners to show cause as to why an order under Section 269UD(1) should not be made, and hearing for the same was fixed on 13th January,1993. The learned Counsel for the Petitioners contended that the built up area of said property was of 1215 sq.ft. and the agreed rate of the said flat was of Rs.1317/- per sq.ft. It is also contended that the instances in the present case and instances in another transaction in Sherman Building are not comparable.

5. It is vehemently contended by the learned Counsel for the Petitioners that the show cause notice has been issued with a pre-determined mind, only to acquire the said property. It is further contended that the report dated 14th November,1987 of the Valuation Officer has not been furnished nor the conclusions of the Valuation Officer have been disclosed to the Petitioners, though they were relied

upon by the Respondents, while passing the impugned order, in spite of Petitioners demanding the same.

6. The learned Counsel for the Petitioners, Mrs.Jagtiani contended that thereafter they had appeared before Respondent No.1 and had made oral submission along with a compilation. The learned Counsel had further pointed out that it was brought to the notice of Appropriate Authority that the said property was not in a good condition and was not in a high locality etc. It was further pointed out that one flat in the same building being Flat No.8 which was of the same measurement had been cleared on 26th February,1992, by the Appropriate Authority at Rs.2608/- per sq.ft. similarly, one another flat admeasuring 774 sq.ft. in Sherman building had been transacted at Rs.5491/- per sq.ft. It is clear from the said transactions that the rates in those buildings were almost double than the rates in Ganga Laheri. If that be so, it cannot be said that there was any undervaluation.

7. It appears that thereafter the Petitioners had received a show cause notice under Section 269UD(1) of the Act for the purchase of the said property by Central Government at Rs.16,00,000/- alongwith the reasons for purchase of the property, wherein it was mentioned that the Respondents had inspected the said property and found that the said property was not

situated at high locality and a difference of Rs.300/- to 400/- per sq.ft. would be appropriate and accordingly, the Appropriate Authority had relied on six various instances wherein the average rate was of Rs.2005/- to 2707/-.

8. It is the contention of the learned Counsel for the Petitioners that the basis of the margin of Rs.300/- to Rs.400/- sq.ft. as a difference between the rate in the building in question and other buildings has not been given, and it has also not been stated that whether the other instances referred to had been visited by Respondent No.1. It is also contended by the Petitioners that since there were three purchases and the amount paid by each was less than Rs.10,00,000/-, the Appropriate Authority had no jurisdiction over the transaction in question. Therefore, the impugned order suffers from patent and manifest errors and defects which would establish that this discretion vested in the Respondents to purchase properties, as punitive measure in cases where there has been a distinct undervaluation and tax evasion has been improperly and arbitrarily exercised.

9. The learned Counsel for the Petitioners, Mrs.Jagtiani also contended that on 9th March,1993, the Petitioners have filed an Application for Rectification under Section 269 UJ of the said Act, calling upon the Respondents to rectify their impugned

order and issue a clearance under Section 269 UL and also to furnish a list of relevant instances in the Banganga locality. It is also contended by the Petitioners that the reasons recorded in the order are entirely arbitrary and untenable. The Petitioners also contended that the reasons recorded refer to a report of the Valuation Officer dated 14th November,1987, which report was not furnished along with the reasons. It is contended that there was no attempt to evade tax and the said property was not undervalued and it ought to have been cleared under Section 269 UL of the said Act. The learned Counsel further contended that the impugned order has came to be passed mechanically and without considering the written submissions filed by the Petitioners. The Respondents have not even granted any opportunity of hearing and have not considered the submissions made by the Petitioners.

10. In the annexure to the show cause notice, at paragraph-6, the Respondents have observed as under:

> . Considering the above rate also, it is very clear that the transaction under consideration is being made at a rate which is too low. Therefore, we are of the opinion that this is a fit case for exercising the right of pre-emptive purchase under Chapter XXC of the Income Tax Act,1961. We order accordingly.

11. Lastly, the learned Counsel for the Petitioners vehemently submitted that the impugned

order is vague and ambiguous and prejudicial to the Petitioners' rights, as there was no valuation of the property and the reasons recorded as based on no evidence and it clearly shows the non application of mind by the Respondents. Hence, the impugned order dated 23rd February,1993 liable to be quashed and set aside.

12. In reply to the contentions raised by the Petitioners, the learned Counsel for the Respondents, Mr.Ashokan contended that all the procedures as well as material formalities, which were required to be carried out, were so carried out by the Appropriate Authority and thereafter, a speaking order was passed, wherein the Respondents have recorded reasons for passing such order. It is the case of the Respondents that while passing the impugned order adequate care was taken, after giving a reasonable opportunity of hearing. Even, the Respondents had personally visited to the site in question before passing the order under Section 269 UD of the Income Tax Act. The learned Counsel for the Respondents has submitted that the impugned order does not suffer from any legal infirmities and it is not based on any reasons either erroneous/irrational or irrelevant. It is further submitted by the learned Counsel for the Respondents that prior to passing the impugned order, the Appropriate Authority had conducted enquiries about the said property. Mr.Ashokan, however could not

controvert paragraph-6 quoted hereinabove in the annexure to the show cause notice. Similarly, he could not dispute that the relevant materials relied upon by the Respondents while passing the impugned order were never furnished to the Petitioners, though demanded by them.

13. We have perused the judgment of this Court in the case of **Mrs.Nirmal Laxminarayan Grover Vs. Appropriate Authority (Income-Tax Department) and Others 223 ITR 572 (Nagpur Bench)**, wherein this Court had dealt with the issue of purchase of immovable property by Central Government, notice Under Section 269 UD of the Income Tax Act etc. In the aforesaid judgment, this Court had categorically held that the order of Appropriate Authority had passed pursuant to such a defective Show Cause Notice was illegal and vitiated for not being in consonance with basic principles of natural justice. The Appropriate Authority had not proved by clear and cogent material that the land in question was significantly under valued and hence, the Court held that the order of compulsory purchase was liable to be quashed. The Court observed that it was necessary for the Appropriate Authority to refer to the details in the show cause notice so that the transferor and/or transferee would have real and proper opportunity to meet the case of the Department. The Court further observed that it was necessary to see that issuing a

show cause notice is not merely an empty formality. The conclusions of the Authority at the stage of giving a show cause notice are always prima facie or tentative conclusions and if it is not so, its ultimate order would suffer from its bias i.e. pre-determined mind.

14. After considering all the above submissions, we are clearly of the view that the impugned order dated 23rd February,1993 is liable to be quashed and set aside, as the same was clearly a "pre-determined order" as is clear from show cause notice. Over and above, even the relevant material relied upon while passing the impugned order was never furnished to the Petitioners, though demanded by them, hence, the impugned order is clearly violative of the principles of natural justice.

15. The judgment in the aforesaid case is squarely applicable in the present case. Under these facts and circumstances of the case and in view of the above referred Judgment of this Court, the impugned order is liable to be quashed and set aside. Accordingly, the impugned order dated 18th February,1993 is quashed and set aside, and the Petition is allowed, Rule is made absolute in terms of prayer clauses (a) and (b) with costs.

(V.C.DAGA,J.) **(DR.S.RADHAKRISHNAN,J.)**